

**§ 765.153 Application of payments.**

(a) *Regular payments.* A regular payment is credited to a scheduled installment on program and non-program loans. Regular payments are applied to loans in the following order:

- (1) Annual operating loan;
- (2) Delinquent FLP installments, paying least secured loans first;
- (3) Non-delinquent FLP installments due in the current production cycle in order of security priority, paying least secured loans first;
- (4) Any future installments due.

(b) *Extra payments.* An extra payment is not credited to a scheduled installment and does not relieve the borrower's responsibility to make scheduled loan installments, but will reduce the borrower's FLP indebtedness. Extra payments are applied to FLP loans in order of lien priority except for refunds of unused loan funds, which shall be applied to the loan for which the funds were advanced.

**§ 765.154 Distribution of payments.**

The Agency applies both regular and extra payments to each loan in the following order, as applicable:

- (a) Recoverable costs and protective advances plus interest;
- (b) Deferred non-capitalized interest;
- (c) Accrued deferred interest;
- (d) Interest accrued to date of payment; and
- (e) Loan principal.

**§ 765.155 Final loan payments.**

(a) *General.* (1) Unless the Agency has reservations regarding the validity of the payment, the Agency may release the borrower's security instruments at the time payment is made, if the borrower makes a final payment by one of the following methods:

- (i) Cash;
- (ii) U.S. Treasury check;
- (iii) Cashier's check; or
- (iv) Certified check.

(2) Security instruments will only be released when all loans secured by the instruments have been paid in full or otherwise satisfied.

(3) The Agency will return the paid note and satisfied security instruments to the borrower after the Agency processes the final payment and determines

that the total indebtedness is paid in full.

(b) *Borrower refunds.* If the borrower refunds the entire loan after the loan is closed, the borrower must pay interest from the date of the note to the date the Agency received the funds.

(c) *Overpayments.* If an Agency miscalculation of a final payment results in an overpayment by the borrower of less than \$10, the borrower must request a refund from the Agency in writing. Overpayments of \$10 or more automatically will be refunded by the Agency.

(d) *Underpayments.* If an Agency miscalculation of a final payment amount results in an underpayment, the Agency may collect all account balances resulting from its error. If the Agency cannot collect an underpayment from the borrower, the Agency will attempt to settle the debt in accordance with subpart B of 7 CFR part 1956.

**§§ 765.156–765.200 [Reserved]**

**Subpart E—Protecting the Agency's Security Interest**

**§ 765.201 General policy.**

All Agency servicing actions regarding preservation and protection of Agency security will be consistent with the covenants and agreements contained in all loan agreements and security instruments.

**§ 765.202 Borrower responsibilities.**

The borrower must:

(a) Comply with all provisions of the loan agreements;

(1) Non-compliance with the provisions of loan agreements and documents, other than failure to meet scheduled loan repayment installments contained in the promissory note, constitutes non-monetary default on FLP loans by the borrower;

(2) Borrower non-compliance will be considered by the Agency when making eligibility determinations for future requests for assistance and may adversely impact such requests;

(b) Maintain, protect, and account for all security;

(c) Pay the following, unless State law requires the Agency to pay:

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(1) Fees for executing, filing or recording financing statements, continuation statements or other security instruments; and

(2) The cost of lien search reports;

(d) Pay taxes on property securing FLP loans when they become due;

(e) Maintain insurance coverage in an amount specified by the Agency;

(f) Protect the interests of the Agency when a third party brings suit or takes other action that could affect Agency security.

### § 765.203 Protective advances.

When necessary to protect the Agency's security interest, costs incurred for the following actions will be charged to the borrower's account:

(a) Maintain abandoned security property;

(b) Preserve inadequately maintained security;

(c) Pay real estate taxes and assessments;

(d) Pay property, hazard, or flood insurance;

(e) Pay harvesting costs;

(f) Maintain Agency security instruments;

(g) Pay ground rents;

(h) Pay expenses for emergency measures to protect the Agency's collateral; and

(i) Protect the Agency from actions by third parties.

### § 765.204 Notifying potential purchasers.

(a) *States with Central Filing System (CFS).* The Agency participates and complies with central filing systems in States where CFS has been organized. In a State with a CFS, the Agency is not required to additionally notify potential purchasers that the Agency has a lien on a borrower's chattel security, unless specifically required by State law.

(b) *States without CFS.* In a State without CFS, the Agency follows the filing requirements specified for perfecting a lien on a borrower's chattel security under State law. The Agency will distribute the list of chattel and crop borrowers to sale barns, warehouses, and other businesses that buy or sell chattels or crops. In addition, the Agency may provide the list of bor-

rowers to potential purchasers upon request.

### § 765.205 Subordination of liens.

(a) *Borrower application requirements.* The borrower must submit the following, unless it already exists in the Agency's file and is still current as determined by the Agency:

(1) Completed Agency application for subordination form;

(2) A current financial statement, including, in the case of an entity, financial statements from all entity members;

(3) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;

(4) Verification of all non-farm income;

(5) The farm's operating plan, including a projected cash flow budget reflecting production, income, expenses, and debt repayment plan; and

(6) Verification of all debts.

(b) *Subordination of real estate security.* For loans secured by real estate, the Agency will approve a request for subordination subject to the following conditions:

(1) If a lender requires that the Agency subordinate its lien position on the borrower's existing property in order for the borrower to acquire new property and the request meets the requirements in paragraph (b)(3) of this section, the request may be approved. The Agency will obtain a valid mortgage and the required lien position on the new property. The Agency will require title clearance and loan closing for the property in accordance with § 764.402 of this chapter.

(2) If the borrower is an entity and the Agency has taken real estate as additional security on property owned by a member, a subordination for any authorized loan purpose may be approved when it meets the requirements in paragraph (b)(3) of this section and it is needed for the entity member to finance a separate farming operation. The subordination must not cause the unpaid principal and interest on the FLP loan to exceed the value of loan security or otherwise adversely affect the security.